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12 INNOVATION VENTURES, LLC, LIVING ESSENTIALS, LLC,
13 and INTERNATIONAL IP HOLDINGS, LLC

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 _____ X
16 INNOVATION VENTURES, LLC, :
17 LIVING ESSENTIALS, LLC, and :
18 INTERNATIONAL IP HOLDINGS, :
19 LLC, :
20 Plaintiffs, :
21 - against - :
22 PITTSBURG WHOLESALE GROCER, :
23 INC. d/b/a PITCO FOODS, ET AL., :
24 Defendants. :
25 _____ :

Case No. 12-5523 (WHA)

**[PROPOSED] CONSENT
JUDGMENT AND PERMANENT
INJUNCTION**

22 RELATED CROSS-ACTIONS.
23 _____ X

24 On consent of Plaintiffs Innovation Ventures, LLC, Living Essentials, LLC, and International IP
25 Holdings, LLC (together, “Living Essentials”) and Defendant Rahib, Goldberg & Associates, Inc.
26 d/b/a Courtesy Wholesale (“RGA”), it is hereby ORDERED, ADJUDGED and DECREED:

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28 1. For purposes of this injunction, the “5-hour ENERGY® Marks” are:

[PROPOSED] CONSENT JUDGMENT and
PERMANENT INJUNCTION

CASE NO. C-12-5523-WHA

- “5 HOUR ENERGY” (Registration No. 3,003,077);
- “5-HOUR ENERGY” (Registration No. 4,004,225);

**5-hour
ENERGY**

- (Registration No. 4,104,670);



- which includes the wording “5-hour ENERGY” in black outlined in yellow, below which are the words “EXTRA STRENGTH” in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from black to red as the sky meets the landscape (Registration No. 4,116,951);



- , commonly referred to as “Running Man,” (Registration No. 3,698,044);
- and



- which includes the wording “5-hour ENERGY” in black outlined in yellow, along with a person in black silhouette, outlined in yellow, shown in an athletic pose adjacent to an uneven landscape, with the sky depicted in transitioning colors from red to yellow as the sky meets the landscape (Registration No. 4,120,360).

2. For purposes of this injunction, the “5-hour ENERGY® Trade Dress” is the distinctive packaging used to distinguish 5-hour ENERGY® products in the marketplace and which consumers associate strongly with the products. The packaging is shown as follows:



3. For purposes of this injunction, the “5-hour ENERGY® Copyright” is United States Copyright Registration Number TX 6-833-514 for the “Caution” label used on the 5-hour ENERGY® bottle. The copyrighted work reads as follows:

CAUTION: Contains about as much caffeine as a cup of coffee. Limit caffeine products to avoid nervousness, sleeplessness, and occasionally rapid heartbeat. You may experience a Niacin Flush (hot feeling, skin redness) that lasts a few minutes. This is caused by Niacin (Vitamin B3) increasing blood flow near the skin.

4. RGA and its agents, servants, employees, and all other persons in active concert and participation with them, are permanently enjoined from:

- a. using any of the 5-hour ENERGY® Marks (or any marks confusingly similar thereto) on any counterfeit product in connection with the manufacture, sale, offer for sale, distribution, advertisement, or any other use of dietary supplements;
- b. using any logo, trade name, or trademark confusingly similar to any of the 5-hour ENERGY® Marks which may be calculated to falsely represent or which has the effect of falsely representing that the services or products of RGA or of others are sponsored by, authorized by, or in any way associated with Living

Essentials;

- c. infringing any of the 5-hour ENERGY® Marks, the 5-hour ENERGY® Trade Dress, or the 5-hour ENERGY® Copyright;
- d. falsely representing itself as being connected with Living Essentials or sponsored by or associated with Living Essentials, or engaging in any act which is likely to cause the trade, retailers, or members of the purchasing public to believe that it or the other defendants are associated with Living Essentials, provided, however, that the purchase and sale of 5-hour ENERGY® products shall not in and of itself fall within this sub-paragraph;
- e. using any reproduction, counterfeit, copy, or colorable imitation of any of the 5-hour ENERGY® Marks in connection with the publicity, promotion, sale, or advertising of dietary supplements;
- f. affixing, applying, annexing, or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent those goods as being 5-hour ENERGY® and from offering such goods in commerce;
- g. buying, selling, transferring (other than to Living Essentials or law enforcement officials), altering, or destroying any counterfeit products with the 5-hour ENERGY® Marks; and
- h. assisting, aiding, or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (g) above.

5. Nothing contained in this Judgment and Permanent Injunction is or shall be construed as an admission, express or implied, of any improper or illegal conduct, or of any culpability or liability by RGA.

1 6. Any claims that RGA may have against any other individual or entity arising out
2 of RGA's purchase, distribution, advertising, offering for sale, and sale in commerce of the
3 products containing the 5-hour ENERGY® Marks are hereby assigned to Living Essentials.

4 7. In addition to other remedies, including damages, for contempt of this Permanent
5 Injunction, in the event of breach or violation of the terms of this Permanent Injunction by RGA,
6 its agents, servants, employees, affiliates, subsidiaries, or any other person in active concert and
7 participation with them, Living Essentials is entitled to a preliminary and permanent injunction
8 against the breaching conduct solely upon a showing of a likelihood of success of establishing
9 that such a breach occurred. A prevailing party, in addition to any award of damages or
10 injunctive relief, shall be entitled to an award of actual attorneys' fees in any such dispute. Living
11 Essentials and RGA each agree that jurisdiction and venue for such an action exist in this District
12 Court and RGA waives any and all defenses based on personal jurisdiction and venue.
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15 This Judgment is entered pursuant to Rule 58 of the Federal Rules of Civil Procedure, and this
16 action is hereby dismissed, with prejudice, only against RGA, without costs or attorneys' fees.
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1 INNOVATION VENTURES, LLC,
2 LIVING ESSENTIALS, LLC, and
3 INTERNATIONAL IP HOLDINGS, LLC

RAHIB, GOLDBERG & ASSOCIATES, INC.

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15 **IT IS SO ORDERED.**

16 DATED: October 7, 2013.

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18 William Alsup
19 United States District Judge
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